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OFFICE OF PETITIONS

In re Application of Wiseman et al. :
Reissue Application No. 10/798,250 :
Reissue Filing Date: March 11, 2004 : Decision on Petition
Reissue of Patent No. 6,355,160 :
Original Issue Date: March 12, 2002 :
Attorney Docket No. 24-0098 :

This is a decision in response to the petition under 37 CFR 1.181, or in the alternative under 37 CFR 1.137(b), filed on November 11, 2005.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **dismissed**.

The petition under 37 CFR 1.137(b) is **granted**.

Facts

A Notice of Missing Parts was mailed May 13, 2004.

One of the requirements listed in the Notice of Missing Parts was the submission of \$516 (large entity fee) for 6 independent claims over the amount in the original patent. The amount due for the claims for a small entity was \$258.

A reply to the Notice to File Missing Parts and a request for a two-month extension of time were filed on September 13, 2004.

The reply included only \$252, rather than \$258, for the excess independent claims.

A Notice of Incomplete Reply (Reissue) was mailed October 18, 2004. The Notice did not set a new time period for response to the Notice to File Missing Parts.

Petitioner did not receive the Notice of Incomplete Reply.

The application became abandoned as of September 14, 2004.

A Notice of Abandonment was mailed on September 12, 2005.

Discussion

The petition to withdraw the holding of abandonment

Petitioner's failure to receive the Notice of Incomplete Reply does not alter the fact a proper reply was not timely received in response to the Notice to File Missing Parts. The Office was under no obligation to advise petitioner of the deficiency in payment of the excess independent claim fees.¹

Since the application became abandoned as a result of a failure to pay the full fee, the Office need not consider the issues concerning assignee consent presented by petitioner. However, petitioner may wish to note MPEP 1410 which states, "Where the patent has not been assigned, the reissue applicant should affirmatively state that the patent is not assigned."

The petition under 37 CFR 1.137(b)

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

Fees to be charged to petitioner's deposit account:

The amount required for a fee is determined at the time the fee is paid in full. As of December 8, 2004, the fee for each independent excess claim increased to \$100 for a small entity. However, the Office applied the funds submitted on September 13, 2004, to the excess independent claims before applying any funds to the excess dependent claim. In other words, petitioner only owes a deficiency for one dependent claim. The current fee for each excess dependent claim is \$25 for a small entity. The Office will charge \$22 (\$25 minus \$3 balance) to petitioner's deposit account for the excess dependent claim. The Office will also charge \$750 for the petition under 37 CFR 1.137(b).

The Office of Initial Patent Examination will be informed of the instant decision and the fact that applicant has stated that no assignees exist. The Office of Initial Patent Examination will take steps to prepare the application for examination.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

¹ See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985); see also In re Colombo, Inc., 33 USPQ2d 1530, 1532 (Comm'r Pat. 1994) (while the Office attempts to notify applicants of deficiencies in their responses in a manner permitting a timely correction, the Office has no obligation to notify parties of deficiencies in a manner permitting a timely correction).